

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Nanci E. Langley, Vice Chairman;  
Mark Acton;  
Tony Hammond; and  
Robert G. Taub

Annual Compliance Report, 2010

Docket No. ACR2010-R

NOTICE AND ORDER CONFIRMING TERMINATION OF STAY

(Issued September 21, 2012)

I. BACKGROUND

On March 29, 2011, the Commission issued its Annual Compliance Determination (ACD) for Fiscal Year (FY) 2010.<sup>1</sup> In the 2010 ACD, the Commission directed the Postal Service to take both general and specific remedial actions with respect to its Standard Mail Flats product. 2010 ACD at 106-107. On May 27, 2011, the Commission granted the Postal Service's request for a stay of the specific remedial action.<sup>2</sup> The general remedial action required by the 2010 ACD was not subject to the stay. *Id.* at 2. Order No. 739 provided that the stay was to be effective "until 30 days

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<sup>1</sup> Docket No. ACR 2010, Annual Compliance Determination, March 29, 2011 (2010 ACD). The issuance of ACDs by the Commission is required by 39 U.S.C. § 3653.

<sup>2</sup> Docket No. ACR2010, Order Granting Stay, May 17, 2011 (Order No. 739).

following the resolution of *United States Postal Service v. Postal Regulatory Commission*, D.C. Cir. No. 11-1117.”<sup>3</sup> *Id.* at 3.

On March 28, 2012, the Commission issued its ACD for FY 2011.<sup>4</sup> In its 2011 ACD, the Commission determined that given the pendency of the review proceedings in D.C. Cir. No. 11-1117, it “will not require remedial action at this time”, notwithstanding the Commission’s finding that “the prices in effect in FY 2011 for Standard Mail Flats remain out of compliance.” *Id.* at 119.

On April 17, 2012, the United States Court of Appeals for the District of Columbia Circuit issued an opinion in *United States Postal Service v. Postal Regulatory Commission*, 676 F.3d 1105 (D.C. Cir. 2012) granting a limited aspect of the Postal Service’s petition for review of the 2010 ACD. The Court remanded the case to the Commission “for a definition of the circumstances that trigger [39 U.S.C.] § 101(d)’s failsafe protection, and for an explanation of why the particular remedy imposed here is appropriate to ameliorate that extremity....” 676 F.3d at 1109. On August 9, 2012, the Commission issued an order on remand responding to the Court’s Opinion.<sup>5</sup>

## II. TERMINATION OF STAY AND PRESENTATION OF SCHEDULE OF PRICE INCREASES

By virtue of the Court’s April 17, 2012 Opinion and the Commission’s August 9, 2012 order on remand, the judicial review proceedings in D.C. Cir. No. 11-1117 have been resolved. Under the terms of Order No. 739, the stay of the specific relief ordered by the 2010 ACD has therefore terminated and is no longer in effect. See Order No. 739 at 3.

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<sup>3</sup> The Postal Service’s petition for review instituting the proceedings in D.C. Cir. No. 11-1117 was filed on April 27, 2011.

<sup>4</sup> Docket No. ACR2011, Annual Compliance Determination, March 28, 2012 (2011 ACD).

<sup>5</sup> Docket No. ACR2010-R, Order No. 1427, Order on Remand, August 9, 2012.

In light of the termination of the stay and the Commission's finding in the 2011 ACD that "the prices in effect in FY 2011 for Standard Mail Flats remain out of compliance",<sup>6</sup> the Commission directs that as part of its FY 2012 Annual Compliance Report (ACR), the Postal Service shall respond to the specific remedy adopted by the 2010 ACD by presenting a schedule of future price adjustments for Standard Mail Flats. The schedule can take the form of Table VII-18 in the 2010 ACD. In addition to the information on the specific remedy that shall appear in the next ACR, the Postal Service shall also provide, in its next ACR and Notice of Market Dominant Price Adjustment, information on the general remedial actions as described on pages 106-107 of the 2010 ACD.

*It is ordered:*

1. In its FY 2012 Annual Compliance Report, the Postal Service shall present a schedule of future price adjustments for Standard Mail Flats as set forth in the body of this Order.
2. In its next Notice of Market Dominant Price Adjustment and Annual Compliance Report, the Postal Service shall provide information on the general remedial actions as described on pages 106-107 of the 2010 Annual Compliance Determination.

By the Commission.

Shoshana M. Grove  
Secretary

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<sup>6</sup> 2011 ACD at 119.